

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1343 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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AVANINDRA M VYAS

Versus

STATE OF GUJARAT  
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Appearance:

MR AD SHAH for Petitioner

MR VM PANCHOLI PUBLIC PROSECUTOR for Respondent No. 1

MR BR GUPTA for Respondent No. 2  
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CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 19/01/2001

ORAL JUDGEMENT

1. The respondent filed the criminal complaint  
against the petitioner (Criminal case No. : 207/92) in

the Court of Metropolitan Magistrate, Court No. 9, Ahmedabad alleging that the petitioner had committed offences punishable under Sections 406 and 420 of the Indian Penal Code. The learned Magistrate ordered the complaint to be sent for investigation under Section 156(3) of the Criminal Procedure Code on 8.7.1992. Thereupon, the petitioner filed the present Special Criminal Application under Article 226 of the Constitution and Section 482 of the Criminal Procedure Code praying that the order for investigation be set aside and quashed. Initially, notice was issued on 7.8.1992 and thereafter, Rule was issued 9.3.1993 and interim relief was granted staying further investigation. The allegation in the complaint is that the complainant is a broker and the petitioner had approached him expressing a desire to purchase shares. It is alleged that the complainant purchased shares as stated in the complaint according to the instructions of the petitioner and the petitioner had signed the memo of confirmation. Thereafter, because of crisis in the market, the petitioner instructed the complainant to dispose of the shares at the prevailing prices and the complainant sold the shares in the market. However, the petitioner refused to pay Rs. 41,4000/- being the amount of difference, which was payable by him. When the complainant demanded the amount from the petitioner, he assured him that he would pay the amount within 5 to 6 days but, thereafter, he said that no such deals as had been made were acceptable to him and he refused to pay the amount. Thus, it is clear that the whole dispute arose on account of sale and purchase of shares, allegedly at the instance of the petitioner and, according to the complainant, the petitioner was liable to pay the amount due on the transaction. However, the dispute is absolutely of civil nature and the complaint does not disclose any offence punishable under Sections 406 and 420 of the I.P.C.. In the circumstances, the petition is allowed and the order dated 8.7.1992 passed by the learned Metropolitan Magistrate, Court No. 9, Ahmedabad in Inquiry case No. 207/92 directing investigation under Section 156(3) of the Cr. P.C. is quashed and set aside. Rule is made absolute accordingly.

( M. C. Patel, J. )

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